

BEFORE THE BOARD OF PERSONNEL APPEALS

STATE OF MONTANA

IN THE MATTER OF

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 371,
Complainant,

-vs-

SANDERS COUNTY COMMISSIONERS,
Respondents.

C E D E R

The Board of Personnel Appeals having reviewed the record in the above-entitled matter hereby orders as follows:

1. That the Respondents' exceptions to findings of fact, conclusions of law and order as recommended to the Board of Personnel Appeals be dismissed.

2. That the findings of fact, conclusions of law recommended to the Board of Personnel Appeals on February 3, 1975, by the Board's duly appointed hearing examiner, be adopted as the Board's own findings of fact, conclusions of law and made a part of this order by reference as though fully set forth herein. It is expressly held that Walter W. Benton is not a supervisor and that he is considered a bargaining unit employee.

3. Therefore it is ordered that Walter W. Benton be immediately reinstated by Sanders County to the same level of employment that he enjoyed prior to the time of his demotion, and that Sanders County will compensate Walter W. Benton for lost wages and other economic loss which Walter W. Benton suffered as a direct and proximate result of his demotion.

DATED this 17th day of March, 1975.


PATRICK F. HOOKS
Chairman
Board of Personnel Appeals

BEFORE THE BOARD OF PERSONNEL APPEALS

INTERNATIONAL UNION OF OPERATING ENGINEERS--
LOCAL #171,

Complaints:

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EMERSON COUNTY COMMISSIONERS,

Respondents

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER AS
RECOMMENDED TO THE
BOARD OF PERSONNEL APPEALS.

The above-entitled matter came on for hearing before Peter O. Maltase, Esq., duly appointed hearing examiner for the Board of Personnel Appeals, in Thompson Falls, Montana on January 3, 1974, pursuant to a complaint in accordance with Section 59-1607, R.C.M., 1947. The hearing was held after a notice of hearing and complaint had been served on the Complainant and Respondents by certified mail on November 29, 1974.

The Complainant was represented by Milton Tatsopoulos, Esq. of the law firm of Goldsman, McChesney and Tatsopoulos, Missoula, Montana; the Respondents were represented by Alex Morrison, Sanders County Attorney.

Basically at issue here is Respondent's underlying reasons for demoting Michael Benton from working foreman of the road crew, Plains District, to Regular operator.

Upon the entire record in this case, from my observation of the witnesses, and their demeanor on the witness stand and upon substantial, reliable evidence, I make the following:

FINDINGS OF FACT

1. The Respondents are the County Commissioners of Sanders County.
W. W. Stearns is and has been a duly elected county commissioner for approximately the past nine years. Commissioner Stearns had control and supervision of the Plains District road maintenance and construction crew and had the authority to hire, fire, promote and demote employees of that crew.

2. The Complainant is the International Union of Operating Engineers, Local #371 (hereinafter called Local 371), the designated exclusive representative for collective bargaining purposes of the employees of the Plains District road maintenance and construction crew.

1 3. The complaint of Local 371 alleged that Walter W. Benton, a working
2 foreman of Sanders County, was demoted because of his union activity and that
3 this demotion resulted in violation of Section 59-1605 (1) (a) (b) & (c), R.C.M., 1947.

4 The complaint also alleged that Walter W. Stearns performed work within
5 the jurisdiction of members of Local 371 by operating a road grader and that
6 this was a violation of the Public Employees Collective Bargaining Act. Counsel
7 for both parties and the Hearing Examiner mutually agreed to remove this alle-
8 gation as an issue at the hearing because this issue could better be resolved
9 in the pending contract negotiations between Local 371 and Sanders County.

10 4. The Respondents contend that Benton quit his job voluntarily and that
11 his demotion from foreman to operator was unrelated to his union activity; but
12 prompted rather by his unsatisfactory performance as foreman.

13 5. Benton was first employed by Sanders County as a regular equipment
14 operator of the road maintenance and construction crew in April of 1972.
15 Benton was promoted to working foreman of the road maintenance and construction
16 crew, Plains District, August 3, 1973 and as a result of that promotion received
17 a twenty cent per hour raise.

18 Prior to his employment with Sanders County, Benton had many years of
19 experience as an equipment operator and had held numerous positions as a
20 boss or foreman.

21 6. An election was held on October 10, 1973 whereby employees of the
22 Plains District road maintenance and construction crew elected to be repre-
23 sented by the International Union of Operating Engineers, Local 371. Benton
24 voted in this election and was included in the bargaining unit.

25 7. On October 11, 1973 Benton was demoted from working foreman to regular
26 operator by Stearns. No reasons were given to Benton for the demotion. Prior
27 to the demotion, Commissioner Stearns had never expressed to Benton through
28 written memoranda, letter, conference, or in any other manner, any dissatis-
29 faction with the manner in which Mike Benton had been performing his duties as
30 a foreman. The demotion resulted in a loss of pay for Benton. Upset over his
31 demotion, Benton left the County Shops and had not, up to the time of this hearing,
32 returned to work for the county.

1 8. Stearns was aware, in June of 1973, that Local 371 was interested in
2 organizing and representing certain employees in Sanders County. Stearns was
3 also aware that Local 371 engaged in activities during July, August, and
4 September of 1973 to organize employees of the Plains District road maintenance
5 and construction crew.

6 Stearns warned Benton when he was promoted, that he could not be a foreman
7 of the Plains District road maintenance and construction crew and an active
8 member of a Union at the same time.

9 9. Stearns testified that he was satisfied with Benton's work as a regular
10 operator but not as a foreman. The evidence clearly establishes that Benton
11 was promoted to foreman on a probationary basis, although the terms of that
12 probation are unclear. Stearns alleges that Benton was demoted because "he had
13 this crew all worked up and was not . . . producing the work that I had gotten
14 out of my other foremen and crews." Stearns denied that Benton was demoted
15 because he considered that Benton was a supervisory employee and therefore
16 should not be active in a union.

17 Stearns' explanations for demoting Benton are unconvincing.

18 a) Stearns gave only one specific illustration of why Benton's performance
19 as foreman was unsatisfactory aside from the general complaint that the crew
20 was "worked up" and not producing the work that other crews and foremen had.
21 Stearns testified that in "one particular week", Benton and his crew were in
22 the county shop one-half hour prior to quitting time, ready to leave. Benton
23 denied that this ever occurred. Stearns' explanation for demoting Benton seems
24 pretextual not only because of the paucity of specific reasons, but also because
25 of the trivial nature of that specific reason.

26 b) Stearns had never expressed to Benton any dissatisfaction with the
27 manner in which Benton had been performing his duties as foreman.

28 10. Resolution and Rationale. I find that Respondent's demotion of
29 Walter W. Benton under the circumstances detailed were in violation of the
30 Collective Bargaining Act for Public Employees. I have given weight to the
31 following considerations:

32 --The timing of the demotion. The demotion took place one day after a

1 Union election in which Benton participated.

2 --Respondent's inadequate explanation of the reasons for the demotion.
3 Respondent's explanation of the reasons for demotion are inadequate and uncon-
4 vincing.

5 --Absence of an indication of dissatisfaction by Respondent. There was
6 a complete absence of an indication of dissatisfaction by the Respondents with
7 Benton's job performance as foreman prior to his demotion.

8 --Union activity of Benton. The record shows that Benton voted in a union
9 election and was included in the bargaining unit.

10 --Knowledge of union activities. The record clearly establishes that
11 Stearns was aware in June of 1971 that Local 371 was interested in organizing
12 and representing employees of Sanders County, and that they engaged in activities
13 during July, August, and September of 1973 to organize county employees, and
14 that Benton voted in the union election and was part of the bargaining unit.

15 --Commissioner Stearns' warning. Stearns told Benton that, as foreman,
16 he could not be active in the union.

17 It seems apparent from the record that Walter W. Benton was demoted from
18 working foreman to regular operator because of his union activities. I do not
19 doubt that Commissioner Stearns' actions with regard to Benton were well-
20 intentional: Commissioner Stearns obviously felt that Benton was a super-
21 visory employee of the county and as such Benton would be placed in an unten-
22 able position as an active union member. Whether or not Benton was a super-
23 visory employee is not a question that I can entertain. That question was
24 decided by the agent of the Board of Personnel Appeals who conducted the Union
25 election October 10th. Suffice it to say that if the Respondents objected to
26 their foreman being an active union member they had alternatives available other
27 than the illegal act of demoting him. They could have, for example, contested
28 his vote in the election.

29 CONCLUSIONS OF LAW

30 That Respondents violated provisions of Section 59-1605, R.C.M., 1947 and
31 are guilty of unfair labor practices as specified in Section 59-1605, (1)(a)
32 & (c), R.C.M., 1947 by demoting and thereby constructively discharging Walter

1 W. Benton from working foreman to regular operator.

2 The demotion of Benton was motivated by Benton's involvement in union
3 activity, which are rights of public employees protected by Section 59-1603,
4 R.C.M., 1947.

5 ORDER

6 It is hereby ordered that the Sanders County Commissioners;


7 1. Cease and desist from discouraging membership in or lawful activity
8 on behalf of the International Union of Operating Engineers, Local 371, or
9 any other labor organization by demoting or discharging any employee because
10 he joined or assisted a labor organization or engaged in any concerted activity
11 protected by Section 59-1603, R.C.M., 1947.

12 2. Take the following affirmative action:

13 (a) Offer to Walter W. Benton immediate and full reinstatement to his
14 former position, that is, working foreman of the Plains District road con-
15 struction and maintenance crew, and make him whole for any loss of pay suffered
16 in consequence of his demotion and constructive discharge because of his
17 engagement in union activity.

18 (b) Notify the Executive Secretary of the Board of Personnel Appeals,
19 in writing, within twenty (20) days from receipt of this decision what steps
20 have been taken to comply herewith.

21
22 DATED on this 15th day of February, 1974.

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25 
26 Peter G. Maltese, Esq.
27 Hearing Examiner
28 Board of Personnel Appeals
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